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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,603	06/09/2005	Norbert Auner	23324	5431
535 7590 11/10/2008 K.F. ROSS P.C. 5683 RIVERDALE AVENUE SUITE 203 BOX 900 BRONX, NY 10471-0900				
EXAMINER				
LANGEL, WAYNE A				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
11/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,603

Applicant(s)

AUNER, NORBERT

Examiner

Wayne Langel

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 10 and 11 is/are allowed.
6) ☒ Claim(s) 1-9 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/CDC)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cuomo et al. Cuomo et al disclose a process for producing hydrogen by reacting silicon with an oxygen supplying reagent composed of at least hydrogen and oxygen, such as water or an alcohol. (See col. 3, lines 3-9, and 58-63; and col. 6, lines 30-44.) The difference between the process disclosed by Cuomo et al, and that recited in claims 1, 2 and 5, is that Cuomo et al do not disclose that the silicon should be amorphous. It would be obvious to employ amorphous silicon as the source of silicon in the process of Cuomo et al, since it would be within the skill of one of ordinary skill in the art to determine whether amorphous or crystalline silicon should be employed. There is no evidence on record of unexpected results which would emanate from the use of amorphous, as opposed to crystalline, silicon in the process of Cuomo et al. Regarding claim 3, it would be obvious to employ a carboxylic acid as the oxygen supplying reagent composed of at least hydrogen and oxygen in the process of Cuomo et al.

Claims 4, 6, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cuomo et al as applied to claim 2 above, and further in view of applicant's admitted prior art. It would be further obvious from applicant's admitted prior art (page 3, lines 23-30 of the specification) to employ covered or uncovered amorphous silicon as the silicon reactant in the process of Cuomo et al.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chaklader. Chaklader discloses a process for producing hydrogen by reacting silicon with water. (See the Abstract.) The difference between the process disclosed by Chaklader, and that recited in claim 1, is that Chaklader does not disclose that the silicon should be amorphous. It would be obvious to employ amorphous silicon as the source of silicon in the process of Chaklader, since it would be within the skill of one of ordinary skill in the art to determine whether amorphous or crystalline silicon should be employed. There is no evidence on record of unexpected results which would emanate from the use of amorphous, as opposed to crystalline, silicon in the process of Chaklader.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "wherein R means generated" renders the scope of the claim vague and indefinite.

Claims 10 and 11 are allowed.

Gallagher and Kindig et al are made of record for disclosing the reaction between silicon and water to form hydrogen.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Langel whose telephone number is 571-272-

1353. The examiner can normally be reached on Monday through Friday, 8 am - 3:30 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Wayne Langel/
Primary Examiner, Art Unit 1793